

# **EXHIBIT 18**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
GREENEVILLE DIVISION

IN RE SOUTHEASTERN MILK ANTITRUST LITIGATION	) ) ) )	Master File No. 2:08-MD-1000
THIS DOCUMENT RELATES TO:	) ) ) )	Judge J. Ronnie Greer Magistrate Judge Dennis H. Inman
<i>Sweetwater Valley Farm, Inc., et al. v.</i> <i>Dean Foods, et al.</i> , No. 2:07-CV-208	) ) ) )	

REPLY IN SUPPORT OF DAIRY FARMER PLAINTIFFS' MOTION FOR  
AN ORDER APPROVING PROPOSED CLASS NOTICE PLAN  
(MOTION AT DOC. 982; RESPONSE AT DOC. 1044)

FILED UNDER SEAL PURSUANT TO 9/22/09 STANDING ORDER

Defendants' mantra is that cooperative members would never be able to utilize the judicial system to remedy a wrong perpetuated against them by their cooperative.

Defendants also disregard case law holding that communications arguing that cooperative members are suing themselves are *misleading and prohibited* because such communications discourage participation in class actions. For example, in *Hampton Hardware*, a cooperative defendant sent letters to putative class members (members of the cooperative) informing them that they were effectively suing themselves by participating in the litigation. *Hampton Hardware*, 156 F.R.D. at 631 ("Every member who joins the class adds to the expense and time needed to protect your Company and you. The expense will, ultimately, come out of your pocket. . . . By asking you to join the class, [plaintiff] is asking you to sue yourself."). The court held that these communications contravened Rule 23 because they had the effect of discouraging class members from participating in the class action litigation. *Id.* at 633 (communications improperly "attempt[] to reduce the class members participation in the lawsuit based on threats to their pocketbooks"). Defendants offer nothing to distinguish this case from *Hampton Hardware*.

Defendants next assert that the Proposed Notices must argue that class members will have to pay any future judgment. (Resp., 7-12.) Defendants' theory that class members *will have to* satisfy any future judgment is based on so many layers of assumptions it borders on nonsensical.<sup>3</sup> Clearly, it is far from certain that the members of DFA/SMA will be responsible for satisfying a monetary judgment. In fact, statistics suggest that it is far more likely that the case settles prior to judgment, and it could settle for structural relief only obligations by DFA/SMA. Further, even if DFA/SMA become responsible for a monetary judgment, it is

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<sup>3</sup> For example, before members of DFA and SMA cooperatives might be liable for paying monetary damages, a judgment must be obtained, the judgment must be monetary and not purely structural, the judgment must be enforced against DFA and SMA instead of their Co-Defendants such as Dean Foods, and the other Defendants must fail to or be unable to pay the judgment.

possible that the damages recovered by their members would exceed their share of the judgment paid. Defendants conveniently ignore these possibilities, and cite no authority requiring that such rank speculation be argued in a class notice. Indeed, even one of the few cases cited by Defendants rejected their argument that the Court should premise class certification decisions on speculative conflicts. *See Int'l Union*, 497 F.3d at 630 (explaining that “the Balkanization of the class action is threatened” if certification decisions are premised on each material legal or economic difference that distinguishes class members).

***Defendants’ Mischaracterization of Plaintiffs’ Proposed Injunctive Relief Should Not Be Included In Any Notice.*** Despite the fact that Defendants *did not oppose* Plaintiffs’ request to certify an injunctive relief class under Rule 23(b)(2), Defendants now argue the Proposed Notices should be amended to explain in expansive detail the injunctive relief sought by Plaintiffs because some aspects of this relief might be “viewed negatively”<sup>4</sup> by some class members. (Resp., 12-15.) There is no merit to Defendants’ argument. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>4</sup> Defendants cite no authority supporting their premise that a mere “negative view” could ever result in an actual conflict.